

Germany: Conservative-Green Party state government passes repressive assembly law

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On March 21, the Christian Democratic Union (CDU)-Green Party coalition in the state of Hesse passed a new assembly law to replace the federal law previously in force. Hesse now joins other German states with similar laws, which represent a major attack on the basic right of freedom of assembly.

In future, a demonstration in Hesse can be restricted, i.e., subject to all kinds of conditions and limitations, if, in the opinion of the authorities, it endangers public “order.” The vague nature of this term, which should not to be confused with the legal term “public safety,” is clear from its definition in the case law issued by Germany’s highest court, the Federal Constitutional Court.

According to the latter, the concept of public order includes

the totality of unwritten [!] rules, the observance of which is regarded as an indispensable prerequisite for orderly human coexistence within a certain area according to prevailing social and ethical views compatible with the values laid down in the Basic Law.

Such a vague definition leaves the door wide open to arbitrary action by the state—and this is exactly what is intended. The explanatory memorandum to the law explicitly emphasises this point, stating:

The protection of public order is an important catch-all provision, aimed at enabling intervention against new or atypical dangerous situations that do not (yet) affect public safety.

“Catch-all,” “new,” “atypical” dangers that do not yet affect “public safety” ... It becomes clear that the state has

been given a wide open field to freely interpret the law.

The law contains provisions which are both far-reaching and novel. For example, in future, assemblies must be registered 48 hours in advance, instead of the 24 hours stipulated previously. According to the explanatory memorandum to the law, a deadline can be extended “in view of the daily work of administrative authorities,” i.e., to also include Sundays and public holidays. This is not only an additional hurdle for those registering a demonstration, but is also intended to give the authorities more time to ascertain actual or alleged “imminent dangers to public safety or order.”

Under section 12 (7), assembly leaders can be rejected as “unsuitable.”

According to paragraph §12 (8), the authorities may in certain cases require the organiser to disclose personal data of those persons intending to act as stewards. Subsequently, those persons can also be “rejected as unsuitable.”

In its statement at the expert hearing in the legislative procedure, the Committee for Fundamental Rights and Democracy wrote:

This is the introduction of a kind of “reliability check under assembly law.” It remains unclear in which form and on the basis of which criteria this would take place; there is no information provided in the explanatory memorandum. However, in order to be able to determine “unsuitability” in the first place, a data basis of some kind is needed.

Accordingly, the authorities would have to create lists with personal data and criteria regarding “unsuitability,” or access already existing databases in the context of assessing suitability. ...) The rule will have a considerable deterrent effect due to the threat of being investigated by state agencies, which in turn has a direct impact on guaranteeing the freedom of assembly.

There are also practical problems: organisers often

select stewards spontaneously, so they usually do not have their data before the meeting.

In addition, those volunteering as stewards are frequently close to the organiser or direct members of the organisations involved. Especially in the case of politically controversial issues, those involved can then reasonably fear being registered by the police or other state authorities.

According to the case law of the Federal Constitutional Court, it is primarily up to participants to organise their assembly. In this context, the visual component of a protest can play a particularly important role, for example by wearing clothing with a uniform colour in order to express a common position and convey unity and determination.

One only has to recall the “yellow vest” protests in France, or the white coats of doctors and nurses worn at recent demonstrations in Germany. At large demonstrations, it is common for different “blocs” to physically distinguish themselves according to political orientation or the particular theme they seek to stress.

The new Hessian Assembly Act, however, stipulates a “ban on uniforms, militancy and intimidation,” which forbids, among other things, the “wearing of uniforms, parts of uniforms or uniform-like items of clothing” if “this conveys the impression of a willingness to use violence and create an intimidating effect.” What allegedly “conveys the impression” and “creates an intimidating effect” is in practice to be decided by the police.

In fact, the new law gives the police practically unlimited powers. Section 10 refers to the HSOG (Hessian Law on Security and Order), which gives the police the right to implement all the measures included under police law.

According to paragraph §11, the police can attend demonstrations at their own discretion to the extent they deem appropriate. This applies to civilian police or undercover agents as well as to police in uniform with all of their protective equipment. According to the law’s explanatory memorandum, only plainclothes police officers have to account for their presence, and in the case of demonstrations, only to the person in charge of the assembly. In addition, the justification for the law emphasises that members of Germany’s domestic intelligence service, the Verfassungsschutz, and undercover agents do not have to identify themselves at all.

One provision that was hotly contested in the run-up to the law is the far-reaching authorisation for the authorities to intimidate and investigate by means of video surveillance. So-called “overview recordings” can already be made by police “if this is necessary in individual cases due to the size

or lack of clarity of the assembly.” It is plain to see that for larger demonstrations the individual case will become the rule. The video recordings can be stored for up to two months.

Law professor Clemens Arzt, who testified at the hearing on the new law in the state’s Interior Committee, quite rightly pointed out that today, technically such pure overview recordings no longer exist: all recordings can be “zoomed in and distilled out.” Such overview recordings are therefore a serious encroachment on the fundamental right to the individual’s right to protection of information. Video surveillance at demonstrations no longer guarantees this right. The consequence is a “very high deterrent effect,” according to the law professor.

The CDU-Green Assembly Act resembles the type of measure favoured by right-wing dictatorships and has been welcomed by representatives of the far-right Alternative for Germany (AfD). The state government’s plan was “well-intentioned,” declared AfD state deputy, Dirk Gaw. It had been merely “poorly crafted.”

The Hessian Assembly Act is one of numerous attacks on basic democratic rights taking place in Germany. In practice it is modelled on the assembly law of the state of North Rhine-Westphalia (NRW), which has been in force since the start of last year and is considered one of the most repressive in Germany. The CDU-Green Party coalition which took over the state government of NRW in July of last year has praised and retained the law.

In Berlin, on May 8 last year, the day of the liberation of Germany from fascism, the display on memorials of the Soviet flag—under which the Auschwitz concentration camp was also liberated—was banned by police.

This was followed shortly afterwards by a ban on all Palestinian demonstrations on Nakba Day, and a few months later the Bundestag tightened up the country’s law relating to popular incitement. Now anyone who questions the alleged war crimes of a country (e.g., Russia) is threatened with punishment. In January, peace activist Heinrich Bücker was convicted for speaking out in public against Germany’s war policy in Ukraine.

Against the background of a growing popular mobilisation worldwide against exploitation, inequality, oppression and war, the ruling class is developing its range of repressive instruments to criminalise and suppress protests.



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